RECENT IMPORTANT DECISIONS

BAILMENTS—CARRIERS—CONVERSION—TROVER BY BAILEE (A COMMON CARRIER) AGAINST A THIRD PERSON.—On the facts as stated by the court of last resort it is often difficult to discover why any action should ever have been thought of, and impossible to see how the judgment of the trial court should have been in favor of the preposterous claim of the plaintiff. Such seems to be the case of *Farmers' Cotton Oil Co.* v. *Atlanta & St. A. B. Ry. Co.* (Ala. 1918), 79 So. 387. Plaintiff carrier by mistake delivered cotton seed to defendant company. Defendant by mistake, not even negligent mistake it would appear, received and used the cotton seed and paid the freight. The consignor and his vendee called off the sale, and defendant paid to the consignee the full or agreed price for the seed. The carrier then demanded the seed of defendant, and without offering to return the freight money now brings trover!

That a bailee may in proper case sue a third person for conversion of the bailed chattel; that such bailee as agent may sue to recover back his principal's property delivered to a third person by mistake; that a carrier who delivers the goods to the wrong party is absolutely liable and may be sued in trover; and that one may be guilty of conversion though he acted in good faith, and without knowledge of the true ownership of the goods, are all principles too well settled to need citation of authority. See, however, Mr. Freeman's monographic note to *Bolling* v. *Kirby*, 90 Ala. 215, 25 Am. S. R. 789, and *Stephens* v. *Elwall*, 4 M. & S. 259, *Pacific Express Co.* v. *Shearer*, 160 Ill. 215. It may be admitted that a bailee may maintain detinue or trover against a third person who has fraudulently or wrongfully induced the bailee to deliver to him the goods of the bailor, or who receiving the goods innocently now wrongfully retains them. *Walker* v. *L. & N. R. Co.*, 111 Ala. 233. But this cannot be extended to a case like the present, where the third person has settled with both bailor and bailee all their just claims for the goods and their carriage.

BOUNDARIES — ACCRETION OR AVULSION. — In an action of ejectment the plaintiff's right to recovery turned on whether the land in question was in Arkansas. Prior to 1873 the principal and navigable channel of the Mississippi River swept in a curve toward Arkansas around the land in dispute; across the peninsula of Mississippi land formed by this curve there was a chute through which in times of high water some water flowed. Gradually this chute increased in volume of water carried and finally, after many years, it became the main channel. *Held*, that the state line had not moved to the chute, hence the land sued for was not in Arkansas. *Davis* v. *Anderson-Tulley Co.* (C. C. A., 8th Circ., 1918), 252 Fed. 681.

When the boundary line between states is a navigable stream the rule of the *thalweg* applies, and the line is the middle of the main navigable channel. *Arkansas* v. *Tennessee*, 246 U. S. 158. The same rule ought to apply as between private owners. In case of shifting of this line by accretion and

erosion the boundaries will shift. 17 MICH. L. REV. 95; *Gifford* v. *Yarborough,* 5 Bing 163; *Lovingston* v. *St. Clair County,* 64 Ill. 56. Where, however, by avulsion a river suddenly changes its course or land is suddenly left dry by the recession of the sea there is no change in boundaries. *Gifford* v. *Yarborough, supra; Arkansas* v. *Tennessee, supra.* In the principal case the change in the channel was accomplished slowly enough to meet the requirements of the rule regarding accretion and erosion, but there was neither accretion nor erosion, for the water did not gradually "creep" over the land. Although not strictly a case of avulsion the same reasons for the result in such cases led to a similar result here. See also *Washington* v. *Oregon,* 211 U. S. 127.

CARRIERS—PASSENGERS — NEGLIGENCE. — An apparently healthy passenger fell in stepping from the platform of a ship's companion way into a life boat, both boats being practically motionless. *Held,* it was not negligence for a seaman who steadied her when she began the step to let her go before she placed her foot on the thwart of the life boat. *Goode* v. *Oceanic Steam Nav. Co., Ltd.* (1918), 251 Fed. 556.

Plaintiff made no claim that defendant owed any duty to assist her, but having volunteered to do so, he must exercise due care. That a person under no duty to act, who volunteers assistance will be held liable for injuries caused by his failure to exercise the proper degree of care is well recognized. *Black* v. *Ry. Co.,* 193 Mass. 448. In *Hanlon* v. *Central R. Co. of N. J.,* 187 N. Y. 73, this principle is emphasized. Defendant's servant assisted the plaintiff in alighting from a railway carriage and removed his support before she got down, causing a fall and the injury complained of. The court said, "The situation in this case it is true was not such as to suggest any serious danger to the plaintiff in leaving the car: but, when the conductor assumed to extend his aid in doing so, she had a right to accept it and rely upon his act as being a careful one." This position is approved in *Younglove* v. *Pullman Co.,* 207 Fed. 797 at 802; *Central of Georgia Ry. Co.* v. *Carlisle,* 2 Ala. App. 514; *Moody* v. *Boston & M. R. R.* 189 Mass. 277; *Nashville etc. R. Co.* v. *Newsome et ux* (Tenn. Nov., 1918), 203 S W. 33. In *Southern Traction Co.* v. *Reagor* (Tex.) 186 S. W. 272, the care to be exercised in such cases is characterized as of "the highest degree." It is submitted the generally accepted and correct statement is that the care to be exercised is such as an ordinary, prudent person would exercise under the same circumstances, the degree varying with the circumstances. *Ry. Co.* v. *Newsome et ux, supra.* The court apparently is not disposed to quarrel with this doctrine. It bases its decision on the proposition that the assistance was only for the purpose of helping plaintiff get started. No authority is cited in support of this distinction. None has been found. On the contrary, the cases seem to hold that the purpose is to assist in safely completing the matter in hand. *Black* v. *Ry. Co., supra; Younglove* v. *Pullman Co., supra,* at p. 802; *Hanlon* v. *Ry. Co., supra; Ry. Co.* v. *Marrs,* 27 Ky. L. Rep. 388. The decision stresses the fact that the step was an easy one, that the plaintiff was in apparent good health, that the harbor was calm, etc., creating the impression that the court